IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO.4891 OF 2006

Piaggio Vehicles Pvt. Ltd. .. .. Petitioner
v/s.
Income-tax Officer,
Ward 11(5), Pune & anr. .. .. Respondents

Ms.Arati Vissanji for petitioner.
Mr.Ashok Kotangale with Mr.S.R.Chavan and Mr.Arun Nagarjun for respondents.

CORAM : H.L. GOKHALE &
J.P. DEVADHAR, JJ.

DATED : 21t August 2006

P.C. :

1. Heard the learned Counsel for the parties.

2. Rule. Rule is made returnable forthwith. A reply has been filed and the rejoinder has also been filed. We have perused them.

3. The question involved in this Petition is regarding the Financial Year 2000-2001. The case of the petitioner is that the petitioner is the Indian Assessee and is manufacturing vehicles in India. It pays the royalty amount to M/s.Piaggio Velcoll Europel Sp-A Italy. However, as far as this year is concerned, the royalty payable as per the Agreement was waived by the Italian party i.e. Piaggio Italy. It has recorded this in its letter

dated 25th September 2001. This letter is enclosed to the rejoinder in which it is mentioned that due to the temporary financial difficulties faced by the petitioner, it has waived the royalty amount for the Financial Year 2000-2001. In view thereof, there were no occasions for the petitioner to charge under Section 195 of the Income Tax Act.

4. The petitioner has already made the payments of the necessary royalty and it is seeking the refund thereof which is being denied by the order dated 27th April 2006 passed by respondent No.2.

5. Although a reply has been filed by the Revenue, the aforesaid factual aspect remains uncontroverted. This being the position, there is no alternative but to set aside the impugned order dated 27th April 2006 and direct the Revenue to refund the amount of Rs.64,40,188/-. Accordingly, we set aside the impugned order dated 27th April 2006 passed by respondent No.2 and direct the Revenue to refund the amount of Rs.64,40,188/-. The refund may be given at outsider side within six weeks from today.

6. We may add that the Revenue has relied upon Circular No.790 dated 20th April 2000, but in the facts of the present case, the same would not get attracted.

7. Rule is made absolute accordingly in terms of prayer (a). There will be no order as to costs.

(H.L. GOKHALE, J.)

(J.P. DEVADHAR, J.)